

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICKEY VALCUE POLK, )  
Petitioner, ) CASE NO. C00-1230C  
v. ) (CR93-271C/CR93-515C)  
UNITED STATES OF AMERICA, ) ORDER STRIKING DOCUMENTS  
Respondent. )

This is an action brought under 28 U.S.C. § 2255. A review of the record reveals that this action was terminated in this Court on June 15, 2001, when the Honorable John C. Coughenour, United States District Judge, issued an Order denying petitioner's § 2255 motion. Petitioner was subsequently denied a certificate of appealability, and the United States Court of Appeals for the Ninth Circuit issued its mandate on May 25, 2002.

On January 10, 2006, the government filed in this closed action a document entitled "Government's Response to Motion to Vacate Sentence Pursuant to 28 U.S.C. § 2255." Judge Coughenour subsequently issued an Order referring the matter to the undersigned for consideration. On January 27, 2006, petitioner filed in this action a motion for an extension of time to file a response to the government's response to his § 2255 motion. It appears that the government's response and petitioner's motion for extension of time were filed in the wrong action.

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1 On December 1, 2005, petitioner filed a new motion under § 2255 which was assigned case  
2 number C05-2003JCC-MJB. On December 8, 2005, the Honorable Monica J. Benton, United States  
3 Magistrate, issued an Order directing the government to file an answer to petitioner's motion within  
4 30 days. (*See* C05-2003JCC-MJB, Dkt. No. 5.) No answer has yet been filed in C05-2003JCC-  
5 MJB. However, as noted above, the Court received a response in this closed action on January 10,  
6 2006. It appears likely that the response filed in this action was simply captioned incorrectly and was  
7 therefore misfiled.

8 Accordingly, this Court does hereby ORDER as follows:

(1) The government's response to petitioner's § 2255 motion (Dkt. No. 24), and  
petitioner's motion for extension of time (Dkt. No. 26), are STRICKEN from this action.

11                   (2) The government is directed to correct the caption on its brief, and to re-file the  
12 document in the proper action, not later than ***February 10, 2006***. The government is further directed  
13 to ensure that the re-filed document bears a proper noting date. (*See C05-2003JCC-MJB*, Dkt. No.  
14 5.)

15                   (3) Petitioner may re-file his motion for extension of time in the proper action if he deems  
16 it necessary and appropriate to do so.

17 (4) The Clerk is directed to send copies of this Order to petitioner, to counsel for  
18 respondent, to the Honorable John C. Coughenour, and to the Honorable Monica J. Benton.

DATED this 3rd day of February, 2006.

*James P. Donohue*  
JAMES P. DONOHUE  
United States Magistrate Judge